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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,345	07/23/2003	Peter M. Stevens	22032.NP	9130

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EXAMINER

TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/626,345

**Applicant(s)**

STEVENS, PETER M.

**Examiner**

Michael Trettel

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-27, 29, 31-35, 37 and 39-53 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 19-21, 23-27, 29, 31-35, 37, 40, 41 and 43-45 is/are allowed.  
6) ☒ Claim(s) 22, 39, 42 and 46-51 is/are rejected.  
7) ☒ Claim(s) 52, 53 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 46 to 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (2,910,259). Johnson shows a surgical arm rest 14 that comprises two distinct and substantially planar sections 16, 18 that are vertically spaced with respect to one another and connected by an offset portion 20 set at a right angle with respect to sections 16 and 18. Offset portion 20 forms two bends connected by an intermediate section between the beds that connects the planar sections 16, 18 as is shown in the side view of Figure 1. The length of the intermediate section formed by the offset 20 is selected to be the same as the thickness of the mattress pad 12 used upon the table, such that the outstanding section 18 is raised to a level contiguous with the upper surface of the mattress. Read column 2, lines 11 to 14. Section 16 is used to retain the arm rest upon a table by being slipped between a mattress and the table and held in place by a patient's weight. Section 18 is used to support the patient's arm and extends away from the table in a cantilevered fashion, as is shown in Figure 1. The arm rest is made from plastic material, fiberglass, reinforced fibrous material, or thin sheet metal, of which at least some are x-ray transparent. In addition the device is formed from a sheet of material that has a substantially constant thickness, the particular material specified is duralumin of 1/8 inch thickness (column 2, lines 5 to 7). This means that the plate has a thickness less than approximately one inch and since claim 49 only sets forth an upper limit upon the thickness and does not specify exactly

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what the thickness is the subject matter of this claim is anticipated. Also note that since other materials such as plastic or fiberglass can be used the thickness of the device is subject to selection by the skilled artisan such that the device can properly support an arm of a user.

***Claim Rejections - 35 USC § 103***

Claims 22 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson. The thickness of the sheet material used to make the Johnson arm rest has been specified as being 1/8 inch thick if duralumin material is used to make the device. It would appear that the particular thickness of whichever of the materials specified for use in lines 1 to 4, column 2 of Johnson would be within the level of ordinary skill in the art, since the skilled artisan would select and choose a material thickness that would properly bear the load of the patient being supported.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (2,910,259) in view of Kabanek (US 5,443,233). Kabanek teaches the use of an armboard 10 for use with a gurney, in which the armboard has a supporting portion 23 that is slipped underneath the supporting surface of the gurney to support the board as is shown in Figure 6. The supporting portion 23 is formed by a pair of tongues 38 that have a length that corresponds to the width of the gurney, as is shown in Figure 7. This help keeps the armboard in place in a secure fashion, since the weight of the patient is dispersed across the entire width of the tongues 38. For this reason it would have been obvious to the skilled artisan to have made the length of the

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support section 16 of the Johnson armrest as long as the width of the table upon which it is meant to be used.

***Allowable Subject Matter***

Claims 52 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19 to 21, 23 to 27, 29, 31 to 35, 37, 40, 41, and 43 to 45 are allowed.

***Response To Arguments***

Applicant's arguments filed October 1, 2004 have been fully considered but they are not persuasive.

The examiner repeats that applicant has not demonstrated or shown any criticality associated with the thickness of the support, at best the applicant has shown that he has used exactly the kind of design logic that the skilled artisan would have used to make the Johnson support if using materials other than duralumin. Criticality is traditionally associated with an unexpected or surprising result caused by using a particular parameter, merely because the applicant used sound engineering logic to arrive at a particular claimed parameter such as the claimed support thickness does not mean that criticality has been established. The argument does not show or demonstrate any surprising result caused by using a material that is less than one inch in thickness, but instead does show that the resulting device will work properly in the environment for which it is meant to be used. As noted in the rejection above, Johnson does in

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fact use a thickness that is constant throughout the device and is less than one inch. Claims 22 and 39 could in fact have been rejected under 35 USC 102(b) in both this action and the previous Office action, but because the examiner had read more into the claims than what they actually set forth a 103 rejection had been made in the previous Office action. The rejection has been repeated in this action so as to not raise a new grounds of rejection in the case.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel  
Primary Examiner  
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